



---

ATTORNEY FOR APPELLANT

C. Matthew Zentz  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Indianapolis, Indiana

David E. Corey  
Supervising Deputy Attorney  
General  
Indianapolis, Indiana

---

IN THE  
COURT OF APPEALS OF INDIANA

---

R.M.,  
*Appellant-Petitioner,*

v.

Indiana Department of Child  
Services,  
*Appellee-Respondent*

February 15, 2023

Court of Appeals Case No.  
22A-XP-1661

Appeal from the Sullivan Circuit  
Court

The Honorable Robert E. Hunley,  
II, Judge

Trial Court Cause No.  
77C01-2112-XP-693

**Opinion by Judge May**  
Judges Crone and Weissmann concur.

**May, Judge.**

[1] R.M. appeals the denial of the motion to correct error she filed after the trial court denied her petition to expunge the Child in Need of Services (“CHINS”) and Department of Child Services (“DCS”) records concerning her 2013 involvement with DCS. R.M. argues the trial court abused its discretion when it denied her request to expunge the substantiated reports of child abuse or neglect filed against her as part of the 2013 CHINS case because she provided sufficient evidence that the records had no current probative value that could justify the records’ continued retention. We affirm.

## Facts and Procedural History

[2] On June 12, 2013, DCS received a report that R.M.’s children, E.M. and A.M. (collectively, “Children”), “were exposed to domestic violence and unsafe living conditions and [Children’s] basic needs [were] not being met.” (Ex. Vol. I at 8.) DCS’s investigation found “deplorable conditions” at the family’s residence, which had been condemned by the health department. (*Id.*) Specifically, the investigator observed

a strong foul odor of trash coming from the home . . . [E.M.’s] bedroom floor [was] covered with trash bags of clothes, dirty diapers, various toys, a fly trap, and several dried fecal matter spots. . . . the bathroom [had] standing water in the toilet with what appeared to be human waste. . . the kitchen [had] flies swarming around the kitchen sink . . . [and] roaches crawling up the wall in the kitchen and on the floor. . . . [The investigator] observed the living room to have garbage scattered through the room, dirty diapers, food, [and] children’s toys, and found that the couch cushions were ripped and not on the couch.

(*Id.*) Children were placed with maternal grandmother. Based thereon, DCS filed a petition to adjudicate Children as CHINS. On February 7, 2014, the trial court adjudicated Children as CHINS.

- [3] On June 5, 2015, the trial court changed the Children’s permanency plan from reunification to adoption because of Mother’s failure to complete necessary services. At some point after that date and prior to the trial court’s periodic review hearing on May 16, 2016, Mother voluntarily relinquished her parental rights to Children. Maternal grandmother adopted Children.
- [4] On December 3, 2021, R.M. filed a petition under Indiana Code section 31-33-27-5 to expunge DCS’s substantiated reports about her. In that petition, R.M. argued her DCS and CHINS records should be expunged because R.M. had not had any subsequent children; R.M. had not been the subject of a DCS investigation since the 2013 CHINS case; and R.M. was “a full-time student with a 3.6 GPA and is the Vice President of Fellowship for the academic honor society Phi Theta Kappa, and Vice President of the Student Government Association.” (App. Vol. II at 17.) DCS filed its objection and response to R.M.’s petition for expungement on January 6, 2022.
- [5] On January 13, 2022, the trial court, without holding a hearing, issued its order denying R.M.’s petition to expunge DCS’s substantiated reports about her. On January 26, 2022, R.M. filed a motion to correct error that requested the trial court vacate its January 13, 2022, order denying R.M.’s petition. R.M. argued DCS’s response to her petition was not filed within thirty days as required by

the Indiana Trial Rules. Additionally, R.M. argued the trial court was required to hold a hearing on R.M.'s petition pursuant to Indiana Code section 31-33-27-5(d). On June 7, 2022, the trial court held a hearing regarding R.M.'s petition for expungement. On June 29, 2022, the trial court issued its order denying R.M.'s motion to correct error and thereby upheld its denial of her petition for expungement of DCS's substantiated reports about her.

## Discussion and Decision

[6] We review a trial court's decision regarding a motion to correct error for an abuse of discretion. *Inman v. Inman*, 898 N.E.2d 1281, 1284 (Ind. Ct. App. 2009). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances that were before the court. *Id.* Determining whether the court abused its discretion when it denied the motion to correct error requires that we review the propriety of the trial court's underlying judgment. *In re Guardianship of M.N.S.*, 23 N.E.3d 759, 766 (Ind. Ct. App. 2014). Here that underlying order is the trial court's order denying R.M.'s petition to expunge DCS's substantiated reports about her.

[7] R.M. argues the trial court abused its discretion when it denied her petition to expunge DCS's substantiated reports regarding her.<sup>1</sup> We review cases

---

<sup>1</sup> In its order, the trial court also indicated it would not expunge records related to R.M.'s 2013 CHINS case pursuant to Indiana Code section 31-39-8-4(a). However, R.M. did not request expungement under that statute. Instead, her petition requested expungement of her "CHINS and DCS records as provided in I.C.

concerning the expungement of substantiated records of neglect or abuse pursuant to Indiana Code section 31-33-27-5 for an abuse of discretion. *G.E. v. Indiana Dept. of Child Servs.*, 29 N.E.3d 769, 771 (Ind. Ct. App. 2015). A trial court abuses that discretion when its decision is clearly against the logic and effect of the facts and circumstances before it or when the trial court misinterprets the law. *Id.*

[8] DCS substantiated reports are eligible for expungement pursuant to Indiana Code section 31-33-27-5, which in pertinent part states:

---

31-33-27-5[.]” (App. Vol. II at 17.) Indiana Code section 31-33-27-5 deals solely with the expungement of substantiated reports maintained in DCS files.

On appeal, R.M. mentions Indiana Code section 31-39-8-4(a) in passing and at the conclusion of her brief, where she asks us to “order expungement of the substantiated reports pursuant to I.C. 31-33-27-5 and expungement of records of a child in need of services pursuant to I.C. 31-39-8-3.” (Br. of Appellant at 14.) First, R.M. cites the wrong statute in her statement. Indiana Code section 31-39-8-4 governs the expungement of CHINS records. Indiana Code section 31-39-8-3 sets out the factors the trial court may consider when making its decision to expunge substantiated reports. Second, R.M. makes no argument regarding the trial court’s denial under Indiana Code section 31-39-8-4. Accordingly, the issue is waived on appeal for failure to make a cogent argument. *See Srivastava v. Indianapolis Hebrew Congregation, Inc.*, 779 N.E.2d 52, 54 n.1 (Ind. Ct. App. 2002) (Indiana Appellate Rule 46(A)(8)(a) requires the argument to be supported by cogent argument, as well as citations to statutes and cases relied upon. Failure to include cogent argument with support therefor results in waiver of the argument.), *trans. denied*.

Waivers notwithstanding, we note a petitioner requesting expungement of CHINS records under Indiana Code section 31-39-8-4 must prove by clear and convincing evidence that “the probative value of the information is so doubtful as to outweigh the information’s validity.” In contrast, a petitioner seeking expungement of DCS’s substantiated reports must prove by clear and convincing evidence “(1) there is little likelihood that the petitioner will be a future perpetrator of child abuse or neglect; and (2) the information has insufficient current probative value to justify its retention in records of the department for future reference.” Ind. Code § 31-33-27-5(f). Proving the falsity of a CHINS finding, as required by Indiana Code section 31-39-8-4, would be a much harder standard to meet than proving a substantiated report has insufficient current probative value to justify retention, as required for expungement of substantiated records under Indiana Code section 31-33-27-5(f). Thus, even had R.M. escaped waiver, her failure to prove the elements of Indiana Code section 31-33-27-5(f) indicates relief under Indiana Code section 31-39-8-4 also would not be available for R.M.

(a) This section applies to information relating to substantiated reports in any records of the department.<sup>[2]</sup>

\* \* \* \* \*

(f) The court may grant the petition if the court finds, by clear and convincing evidence, that:

(1) there is little likelihood that the petitioner will be a future perpetrator of child abuse or neglect; and

(2) the information has insufficient current probative value to justify its retention in records of the department for future reference.

Pursuant to Indiana Code section 31-33-27-5(f), R.M. was required to prove by clear and convincing evidence that she met those two requirements. When we review a determination made under a clear and convincing standard, we affirm “if, ‘considering only the probative evidence and the reasonable inferences supporting it, without weighing evidence or assessing witness credibility, a reasonable trier of fact could find [the necessary elements] proven by clear and convincing evidence.’” *In re T.K.*, 27 N.E.3d 271, 273 (Ind. 2015) (quoting *Bud Wolf Chevrolet, Inc. v. Robertson*, 519 N.E.2d 135, 137 (Ind. 1988)).

[9] When, as here, the trial court enters findings sua sponte after a bench trial, the findings control our review and judgment only as to those issues specifically

---

<sup>2</sup> The parties do not dispute the word “department” refers to DCS.

referenced in the findings. *Samples v. Wilson*, 12 N.E.3d 946, 949-50 (Ind. Ct. App. 2014). When the trial court does not make specific findings on an issue, we apply a general judgment standard, which permits us to affirm on any legal theory supported by the evidence adduced at trial. *Id.* at 950.

A two-tier standard of review is applied to the sua sponte findings and conclusions made: whether the evidence supports the findings, and whether the findings support the judgment. Findings and conclusions will be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. In conducting our review, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. We will neither reweigh the evidence nor assess witness credibility.

*Id.* R.M. does not challenge the trial court’s findings of fact, and thus they stand proven. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

[10] The trial court found and concluded R.M. met the first prong of the test iterated in 31-33-27-5(f): “[T]he Court finds that there has been evidence presented by clear and convincing evidence that [R.M.] is not a threat to children in the future that has not been disputed by DCS[.]” (App. Vol. II at 28.) Accordingly, at issue herein is the second prong of that test. R.M. argues the trial court abused its discretion when it denied her petition for expungement of her substantiated reports of abuse or neglect because she presented evidence to –

demonstrate any DCS substantiated report had “insufficient current probative value to justify its retention in records of the department for future reference.” *See* Ind. Code § 31-33-27-5(f). However, R.M. does not challenge specific findings in the trial court’s order, and thus we turn to whether the trial court’s findings support its conclusion that DCS’s substantiated reports about her do have sufficient current probative value to warrant retention for future reference.

[11] The trial court found, in relevant part:

9. In support of her Motion, [R.M.] has stated that she has not had any involvement with DCS since that time, that she has had no further criminal actions since the closure of her case, that she is now currently in school to become a sonographer, and that she is currently even volunteering with a charity that assists foster children. Additionally [R.M.] presented an expert in social work, Nathan Floyd, who said he does not believe that [R.M.] is a threat to children.

10. However, against her Petition, evidence and testimony was presented. Specifically, [sic] that [R.M.] was an adult in her 20s when the DCS assessment and case occurred, that the case involved unsafe home conditions; the Children were ultimately removed and a CHINS case was filed; the Children were adjudicated services; and ultimately [R.M.’s] parental rights were terminated.

11. There was conflicting evidence based on the testimony of [R.M.] and the testimony and records of DCS regarding [R.M.’s] participation in services. The Court finds that the evidence supports DCS’s position regarding her participation, in that [R.M.] was not compliant with services, as had she been compliant the case would have unlikely progressed to the point of her signing a voluntary termination [sic] of parental rights.



12. By [R.M.'s] own testimony, she retains regular contact with her children, and in fact resides in a home with a [sic] another child. The Court can see the probative value of retaining these records in the even [sic] a new report was made.

13. Additionally, if there are rules and regulations regarding [R.M.'s] chosen [sic] course of study, those rules exist for reasons not to punish, but to protect those that may chose [sic] to educate and employ [R.M.] in the future.

14. As the Court in *G.E.* stated, given the potential risks to potential licenses and statutory and administrative schemes, the records have probative value.

(App. Vol. II at 28-9) (internal case citation omitted). Based thereon, the trial court concluded:

While the Court finds that there has been evidence presented by clear and convincing evidence that [R.M.] is not a threat to children in the future that has not been disputed by DCS, the Court does not find that [R.M.] has proven that there is no probative value in retaining those records based on the standards set forth in the statute.

(*Id.* at 28.)

[12] In her challenge to the trial court's conclusion that there exists probative value in retaining DCS's substantiated records regarding her, R.M. attempts to distinguish *G.E.*, the seminal case interpreting this statute. In that case, G.E.'s parental rights to four of her children were terminated in 2000 due to G.E.'s continued drug use and noncompliance with ordered services. *G.E.*, 29

N.E.3d at 770. On November 13, 2013, G.E. filed a petition to expunge DCS's substantiated reports pursuant to Indiana Code section 31-33-27-5. *Id.* G.E. told the trial court "she had not used any controlled substances since 2003, that she is in contact with all of her children and some of her grandchildren, and that she has had no further contact with the juvenile courts, nor had she committed any crimes." *Id.* The trial court denied G.E.'s petition to expunge DCS's substantiated records about her. *Id.*

[13] On appeal, G.E. argued the trial court abused its discretion when it denied her expungement petition because she had shown by clear and convincing evidence that she no longer posed a threat to children and her substantiated report of neglect or abuse no longer has current probative value. *Id.* at 772. However, we rejected that argument:

Here, the only evidence presented was G.E.'s testimony that she had not used any controlled substances since 2003, that she was is [sic] in contact with all of her children and some of her grandchildren, and that she had not had any further contact with the juvenile courts or committed any crimes. Because G.E.'s burden of proof is clear and convincing evidence, and that burden is greater than a preponderance of the evidence, it was not unreasonable for the juvenile court to deny her petition where the only evidence presented was her testimony.

In addition, even if we were to assume that G.E.'s testimony alone established by clear and convincing evidence that she no longer posed a threat to children, the juvenile court still did not err. Indiana Code § 31-33-27-5(f) also requires G.E. to show that her substantiated report of neglect or abuse no longer has *current* probative value to keep in DCS's records. Here, the fact that

G.E. chose to work at a child care center makes her history of child neglect and substance abuse relevant, as Indiana Code §§ 31-33-26-2 thru 31-33-26-16 require DCS to maintain a database of perpetrators like G.E. and make that database available to certain people and entities, including child care providers. Further, child care providers are prohibited by administrative rule from employing or utilizing “the services of a person known by the division and reported to the center as a substantiated perpetrator of child abuse.” 470 Ind. Admin. Code 3-4.7-13(c) (2015). Further, if a criminal history check of an employee shows that an offense of child abuse, neglect, or exploitation has occurred, “sufficient grounds exist to revoke or deny licensure, deny employment or dismiss an employee[.]” 470 IAC 3-4.7-8(c)(16) (2015). Given the potential risk to [G.E.’s employer’s] child care license, the statutory and administrative schemes governing the operation of child care providers make clear that G.E.’s records have probative value.

*Id.* (emphasis in original).

[14] R.M. argues her case is distinguishable because she does not work with children.<sup>3</sup> However, the trial court found, and R.M. does not challenge, that

---

<sup>3</sup> R.M. also argues:

While the Court has stated the statute requires a two-prong analysis, it would stand to reason that satisfying the first prong of the statute would lend itself substantially to satisfying the second prong. If the petitioner shows by clear and convincing evidence that there is little likelihood that they will be a future perpetrator of child abuse or neglect, then the presumption should be that there is insufficient probative value to justify the retention of the records.

(Br. of Appellant at 13-4.) However, R.M. does not cite case law to support this argument, and thus it is waived. *See Pasha v. State*, 524 N.E.2d 310, 314 (Ind. 1988) (“Bald assertions of error unsupported by either cogent argument or citation to authority result of waiver of any error on review.”). Waiver notwithstanding, we presume that if the legislature intended one prong of the test to signify compliance with both prongs, it would not have crafted the statute with two prongs. *See, e.g., Burks v. Bolerjack*, 427 N.E.2d 887, 890 (Ind. 1981) (“[t]he language in a statute is deemed to have been used intentionally”).

she lives with a child. Because R.M. lives with a child, the trial court noted the retention of her DCS substantiated reports would be of probative value in the event DCS received a report that R.M. was engaging in behavior that would be neglect or abuse of a child. Further, the licensing requirements for R.M.'s current or any future course of study are unknown and, as the trial court found, DCS's substantiated report about R.M. could be relevant to those decisions. Based thereon, we conclude the trial court's findings support its conclusion that DCS's substantiated reports about R.M. had sufficient current probative value to justify their retention by DCS for future reference. Therefore, the trial court did not abuse its discretion when it denied R.M.'s petition to expunge DCS's substantiated reports about her. *See G.E.*, 29 N.E.3d at 773 (affirming the trial court's denial of G.E.'s petition to expunge DCS's reports based in part on the fact that she had not shown by clear and convincing evidence that there was insufficient current probative value to justify the retention of those records by DCS for future reference).

## Conclusion

[15] The trial court did not abuse its discretion when it denied R.M.'s request to expunge DCS's substantiated reports about her because R.M. did not show those records had insufficient current probative value to justify their retention by DCS for future reference. Accordingly, we affirm the trial court's denial of R.M.'s motion to correct error.

[16] Affirmed

Crone, J., and Weissmann, J., concur.